Should The Courts Of First Instance Be Transformed Into Collegiate Trial Courts?

By PEDRO L. YAP

BILL No. 3205 now pending before the National Assembly provides for the creation of circuit collegiate trial courts, each to be composed of a presiding judge and two associate judges. These collegiate courts, which must always sit *in banc*, shall have the same authority, powers and prerogatives as the present courts of First Instance, except that they shall hear and decide only cases involving crimes punishable with death penalty or with imprisonment exceeding six months. The accused may waive in writing, at the time of entering his plea in the proper court of first instance, his right to be tried by a collegiate court.

The decisions of the collegiate court shall be by majority vote. Whenever a dissent is registered, the decision of the court shall not be conclusive on the facts, and shall be appealable to the Court of Appeals. But when unanimous, the decision of the trial court shall be final on all questions and issues of fact adjudged therein—except in cases where the death penalty is imposed.

The bill evidently seeks to transform the present courts of first instance, when sitting to hear criminal cases, into a sort of modified and improved jury. If passed, the bill would admittedly effect a substantial, if not a radical change, in our system of administration of justice.

It is safe to assume that a client, in many cases, would prefer to be tried before three judges. If he is defeated, the procedure would have almost the same salutary effect on him as an adverse verdict by a jury. It would go far to convince him that he had been mistaken really as to the law or facts. An unsuccessful litigant would ordinarily find more assurance, and perhaps more comfort, in the fact that the decision in his case has been arrived at by at least more than one judge. While it is true that the primary purpose of a court of justice is only to right wrongs, there must also be the object of convincing the public that justice has actually been done.

Indeed, a three-judge court could presumably try cases better and with far less probability of error than the same three judges, sitting separately. That three heads are better than one is obvious. There is created in fact a system of checks and balances which greatly increases efficiency and reduces to a minimum the risk of error, resulting from lack of knowledge, lack of judicial temperament, bias or prejudice.

Thus the proponents of the measure claim that the creation of the collegiate courts will give

the people a better assurance that their life and liberties will be more properly safeguarded. In a message accompanying the bill, President Quezon said: "It does not seem to me right that the determination of the guilt or innocence of an accused person should depend upon the opinion of a single judge... The establishment of collegiate trial courts, as proposed in a measure now before you, will afford accused persons the benefits of a trial by a modified and improved jury... Their unanimous decision, based on personal observation and scrutiny of the witnesses, will lend greater security against judicial error than the present method of review by appellate courts where the judges, in weighing the evidence, have to rely exclusively on the testimony of witnesses appearing on the record."

But it can be argued, on the other hand, that there is no safety, nor even assurance, in mere number. In cases where the opinion of the court is divided, the 3-judge court becomes, in effect, a one-judge court. For when the two judges hold opposing opinions, the mind of the trial court has to be, in strict sense, made up by the remaining judge. In this case, the decision of the court is practically the decision of one judge.

While it might be to a certain extent true that a three-judge court can try cases better—or at least with less probability of error—than a one-judge court, yet in the final analysis, it is really upon the *quality* rather than the *quantity* of judges that the people must ultimately rely for the protection of their rights and liberties. There can be no better assurance that the constitutional rights of the people are being properly safeguarded than in the creation and maintenance of a truly independent and ever alert judiciary. And, as Roscoe Pound observed, the daily criticism of trained minds, the knowledge that nothing which does not conform to the principles and received doctrines of scientific jurisprudence will escape notice, does more than any other agency for the everyday purity and efficiency of courts of justice ("Causes of Popular Dissatisfaction with the Administration of Justice," Journal of the American Judicature Society, February, 1937, p. 181)

For the better administration of justice, we must seek more able, carefully trained and fearless judges, freed from domination of political machines and rewarded by decent compensation and reasonable tenure of office. The improvement of personel is indeed more vitally necessary than the improvement of legal rules or changes of institutions.

Far from insuring the independence of the judiciary, the proposed measure might have a tendency to undermine the stability of our courts. It was barely five years ago that our judicial system had undergone a reorganization. There is no reason why we should again be making changes in our system of judicial administration, unless such change is imperatively necessary. A general feeling of instability might result.

The judiciary has indisputably become the greatest single factor in the maintenance of the stability of organized society. For this reason it is vitally important, indeed essential, to guard against

hasty and ill-considered changes in the judicial system which tend to undermine the people's faith in their courts of justice. No change in the judiciary should be made, or even contemplated, unless shown to be conducive really to a better administration of justice. Our courts must be progressive, it is true. But let us not be experimenting too often nor too eagerly with our courts of justice.

REMISSION

"ONCE in a Kentucky court, Tom Marshall was using quite abusive language, and the judge, after one or two reprimands, fined him ten dollars for contempt. Mr. Marshall looked at the judge with a smile and asked where he was to get the money, as he had not a cent. "Borrow it of a friend," said the court. "Well, sir," answered Mr. Marshall, "you are the best friend I have; will you lend me the money?" "Mr. Clerk," said the judge, "you may remit the fine. The state is as able to lose it as I am." —*Modern Eloquence, Vol. X.*